

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-2030

GOKAL CHAND KAPOOR,

Petitioner,

versus

JOHN ASHCROFT, Attorney General,

Respondent.

On Petition for Review of an Order of the Board of Immigration Appeals. (A75-394-627)

Submitted: July 12, 2004

Decided: August 4, 2004

Before WILKINSON, MOTZ, and TRAXLER, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Ivan Yacub, LAW OFFICE OF IVAN YACUB, Falls Church, Virginia, for Petitioner. Peter D. Keisler, Assistant Attorney General, Linda S. Wendtland, Assistant Director, Elizabeth J. Stevens, Office of Immigration Litigation, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondent.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Gokal Chand Kapoor appeals the Board of Immigration Appeals' ("Board") order denying his motion to reconsider and to reopen. To the extent Kapoor seeks to challenge the Board's December 18, 2002, order dismissing his appeal from the immigration judge's decision, we note Kapoor did not file a timely petition for review from that order. See 8 U.S.C. § 1252(b)(1) (2000); Stone v. INS, 514 U.S. 386, 394, 405 (1995).

This Court reviews the Board's denial of a motion to reopen or a motion to reconsider for abuse of discretion. 8 C.F.R. § 1003.2(a) (2004); INS v. Doherty, 502 U.S. 314, 323-24 (1992); Yanez-Popp v. INS, 998 F.2d 231, 234 (4th Cir. 1993). Such motions are especially disfavored "in a deportation proceeding, where, as a general matter, every delay works to the advantage of the deportable alien who wishes merely to remain in the United States." Doherty, 502 U.S. at 323. We find the Board did not abuse its discretion in denying the motion to reopen on the basis it was not shown that the new evidence could not have been submitted in the proceedings before the immigration judge. Onyeme v. INS, 146 F.3d 227, 234 (4th Cir. 1998). We further note the Board did not abuse its discretion in denying the motion to reconsider. Kapoor failed to effectively establish the level of past persecution necessary to be eligible for a discretionary grant of asylum even if there is no reasonable likelihood of present abuse.

Accordingly, we deny the petition for review. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED